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Maine Labor Relations Board Annual Report, Fiscal Year 1998

Maine Labor Relations Board

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ANNUAL REPORT
MAINE LABOR RELATIONS BOARD

Fiscal Year 1998

This report is submitted pursuant to 26 M.R.S.A. §§ 968(7) and 979-J(1).

Introduction

During the past year, the Board had requests for services from all segments of the public sector that have statutorily conferred collective bargaining rights. As will be noted later in this report, there were some fluctuations in the Board's activities compared to the previous year. While there was a decrease in the number of prohibited practice complaints filed, there was an increase in representation activity this year. The number of voluntary agreements on new bargaining units increased significantly. In the dispute resolution area, the number of mediation requests received decreased, there was also a slight decrease in the number of fact-finding requests received, and a significant decrease in the number of fact-finding hearings conducted.

Public Chair Peter T. Dawson of Hallowell, Alternate Chairs Kathy M. Hooke of Bethel and Pamela D. Chute of Brewer, and Alternate Employer Representative Edwin S. Hamm of Old Orchard Beach continued to serve in their respective capacities throughout the year. Employee Representative Gwendolyn Gatcomb of Winthrop and Alternate Employee Representatives Wayne W. Whitney of Brunswick and Carol B. Gilmore of Charleston were each nominated by the Governor and confirmed by the Legislature to serve an additional four-year term. Employer Representative Howard Reiche, Jr., of Falmouth resigned from the Board on November 3, 1997. Alternate Employer Representative Karl Dornish, Jr., of Winslow was nominated by the Governor and confirmed by the Legislature to complete the balance of the term of office of the Primary Employer Representative. The Alternate Employer Representative position formerly held by Mr. Dornish remains vacant at this time.

As in past years, the staff of the Board handled a great many inquiries from public employers and employees or their representatives, the media, and members of the public. The staff continues to be the primary source of information for persons interested in the operations and procedures of Maine's public sector labor laws. In those instances that involved matters over which the Board has no jurisdiction, the staff continued the policy of providing some orientation for the inquirer, suggesting other agencies or organizations that

might be of help, and making appropriate referrals.

In a major customer service initiative, the Board staff has recently launched a new internet web site for the MLRB. This new web site represents a major improvement over the Board's prior site in the amount and usefulness of the information provided, the number of Board and Court decisions included, and the effectiveness of the site as a research tool for customers and Board staff. From an administrative standpoint, the new site has the advantage of being one that can be fully maintained by Board staff, rather than having to rely on the Bureau of Information Services.

The new web site vastly improves the opportunity for effective research of Board decisions. Previously, one had to use the Index and Abstracts of MLRB Decisions for cases through 1987, then use a very limited search engine on the old internet site for cases from 1985 through 1995, and then manually research the most recent decisions. The new web site has all of the PPC decisions from 1980 to date and includes a very effective search engine allowing the user to search for terms, phrases, parties or citations to a particular case. Hypertext links have been added in all of the Superior and Law Court decisions and some of the Board decisions so that anytime another Board decision is cited, one can immediately jump to that case. Although the new web site includes only a limited number of unit cases at this time, this database will be expanded as well in order to provide the resources needed for all facets of practice before the Board. The address for the new site is <http://janus.state.me.us/mlrb/other/homemlrb.htm>.

Legislative Matters

The Board did not submit any legislative proposals during the Second Session of the 118th Legislature; however, two bills considered by the Legislature will have an impact on the Board. The first measure enacted, an Act to Give Collective Bargaining Rights to Legislative Employees, PL 1997, c. 741, will extend the same collective bargaining rights currently enjoyed by Executive Branch employees to certain Legislative Branch employees, effective July 1, 1999. Individuals employed by the Legislature more than 30 days other than those appointed to office for a specific term, those having a confidential labor relations nexus to the Legislative Council, and employees of the office of the President of the Senate, the office of the Speaker of the House, the office of the Secretary of the Senate, the office of the Clerk of the House, and the majority and minority offices will be

covered by the bill.

The second measure enacted, An Act to Improve Public Sector Labor Relations, PL 1997, c. 773, amends the Municipal, State and Judicial Employees Labor Relations Acts to provide that the parties' obligation to arbitrate grievances concerning employee discipline or discharge continues after expiration of the collective bargaining agreement and prior to accord on a successor agreement. The effect of the measure is to reverse the result reached by the Supreme Judicial Court in *Teamsters Union Local 340 v. Portland Water District*, 651 A.2d 339 (Me. 1994). The bill also repealed PL 1997, c. 668, §6, which provided that certain persons who contract with the Bureau of Revenue Services are not State employees within the meaning of the State Employees Labor Relations Act ("SELRA"). By explicitly exempting certain contractors from collective bargaining, chapter 668 called into question the bargaining status of all persons who contract with departments other than BRS. The Board has held that persons who contract with the State and who are independent contractors under the traditional common law test are not State employees within the meaning of SELRA.

In addition, the Board staff monitored 12 other bills, attending public hearings and work sessions, and assisting Legislative committees in their consideration of matters with potential impact on collective bargaining.

Bargaining Unit and Election Matters

During fiscal year 1998, the Board received 39 voluntary or joint filings for the establishment of or change in collective bargaining units. There were 23 filings in FY 97 and in FY 96, 28 filings in FY 95, 18 filings in FY 94, and 23 in FY 93. Of the 39 FY 98 filings, 18 were for educational units, 18 within municipal or county government, and 3 concerned State Executive Branch employees. The unit agreements were filed by the following employee organizations:

Maine Education Association/NEA ¹	15 agreements
AFSCME Council 93	6
Teamsters Union Local 340	6

¹While reference is made to the Maine Education Association/NEA for sake of simplicity, the various activities described were undertaken by local associations which are affiliated with MEA.

Maine State Employees Association	4
American Federation of Teachers	3
International Longshoremen's Association	2
International Association of Fire Fighters	1
Scarborough Paramedic Association	1
Town of Topsham Employee Association	1

Seventeen (17) unit determination or clarification petitions (submitted when there is no agreement on the composition of the bargaining unit) were filed in FY 98: 13 were for determinations, and 4 were for clarifications. One of the new unit filings actually went to hearing and decision; agreements were reached in 13 cases, and 3 are pending. Board agents conducted hearings in 4 cases, including 3 cases carried forward from previous years. Once a unit petition and response are filed, a member of the Board's staff, other than the assigned hearing officer in the case, contacts the parties and attempts to facilitate agreement on the appropriate bargaining unit. This involvement, successful in 76.5% of the cases this year, saves substantial time and litigation costs for public employers and bargaining agents. There were 19 unit filings in FY 97, 9 in FY 96, 17 in FY 95, 16 in FY 94, and 12 in FY 93. The unit determination/clarification requests were filed by the following employee organizations:

Maine Education Association/NEA	7 petitions
AFSCME Council 93	3
American Federation of Teachers	2
International Association of Machinists & Aerospace Workers	2
Teamsters Union Local 340	2
Maine State Employees Association	1

After the scope and composition of the bargaining unit is established, either by agreement or by unit determination, a bargaining agent election is conducted by the Board to determine the desires of the employees, unless a bargaining agent is voluntarily recognized by the public employer. During FY 98 there were 7 voluntary recognitions filed. Three involved the Maine Education Association/NEA, and there were 1 each involving AFSCME Council 93, the American Federation of Teachers, Maine State Employees Association, and the Scarborough Paramedic Association. Sixteen (16) bargaining agent election requests were filed in FY 98; 21 elections were actually held, including matters carried forward from FY 97, and 2 matters are pending. The bargaining agent election petitions filed this year involved the following employee organizations:

Maine Education Association/NEA	6 petitions
AFSCME Council 93	5
American Federation of Teachers	2
International Association of Machinists & Aerospace Workers	2
Teamsters Union Local 340	1

In FY 97, there were 5 voluntary recognitions filed, 18 bargaining agent election requests received, and 10 elections held.

In addition to representation election requests, the Board received 2 requests for decertification/certification. This type of petition involves a challenge by the petitioning organization to unseat an incumbent as bargaining agent for bargaining unit members. An election was held in response to one of the petitions and the results were as follows:

<u>Petitioner</u>	<u>Incumbent Agent</u>	<u>Prevailed</u>
Maine Association of Police	Teamsters Union Local 340	M.A.P.
Maine Association of Police	AFSCME/Council 93	Pending

The Board received 8 straight decertification petitions in FY 98. No new union is involved in these petitions; rather, the petitioner is simply attempting to remove the incumbent agent. The outcome of the decertification election requests filed is as follows:

<u>Incumbent Agent</u>	<u>Outcome</u>
AFSCME, Council 93	No Representative
AFSCME, Council 93	No Representative
American Federation of Teachers	AFT
American Federation of Teachers	Pending
International Union of Operating Engineers	I.U.O.E.
Maine Education Association/NEA	No Representative
Maine State Employees Association	No Representative
Teamsters Union Local 340	Disclaimer of Interest filed

There were 10 election matters carried over from FY 97. Consequently, there were 36 such matters requiring attention during the fiscal year; this compares with 25 in FY 97, 26 in FY 96, 22 in FY 95, 22 in FY 94, and 20 in FY 93.

Dispute Resolution

The Panel of Mediators is the statutory cornerstone of the dispute resolution process for public sector employees. Its importance continues to be reflected in its volume of activity and in its credibility with the client community. The activities of the Panel are

summarized in this report and are more fully reviewed in the Annual Report of the Panel of Mediators.

The number of new mediation requests received during the fiscal year decreased slightly. There were 68 new requests filed this year compared with 74 in FY 97, 69 in FY 96, 77 in FY 95, 114 in FY 94, and 115 in FY 93. In addition to the new mediation requests received during FY 98, there were 36 matters carried over from FY 97 that required some form of mediation activity during the year. Thus the total number of mediation matters requiring the Panel's attention in this fiscal year was 104, down from 111 in FY 97. During the downturn in the regional economy of the last four years, most parties were opting for one-year agreements, hoping that more favorable conditions would prevail the following year. As a result, many more agreements expired in FY 93 and FY 94 than would normally be expected. Beginning in mid-FY 1994, more parties resumed negotiating multi-year agreements. Given the statutory restriction that collective bargaining agreements not exceed three years' duration, last year's report anticipated continued growth in demand for mediation services. The marginal decline in demand this year reflects significant external factors affecting the bargaining process--continued improvement in the regional economy and increased state aid to education. These developments facilitated the bargaining process and reduced demand for mediation.

This year the settlement rate for cases where mediation was concluded, including carryovers from FY 97, continued the improvement begun in FY 96 from the record low of 50% in FY 95. This year's settlement rate was 82.3%. During the past 15 years, the settlement rate has ranged from 50% in FY 1995 to 82.1% in FY 1997, with a mean of 74.6%. Anecdotal evidence from the mediators and partisan representatives suggests that this increase may be due to a combination of the following factors: general improvement in the regional economy has resulted in the availability of additional resources for settlement of agreements, continued utilization of non-confrontational bargaining techniques, and a rate of increase of health insurance premiums at or below the general cost of living in the region.

Since both new filings and cases carried over from prior years contributed to the actual work load of the Panel in the course of the twelve-month period, we have reported settlement figures that represent all matters in which mediation activity has been completed during the reporting period. The following employee organizations filed requests for mediation services this year:

Maine Education Association/NEA	38 requests
Teamsters Union Local 340	18
AFSCME Council 93	4
International Association of Fire Fighters	4
Maine State Employees Association	2
Town of Topsham Employee Association	1
Maine Association of Police	1

The level of preventative mediation activity remained strong this year. We received 6 requests for preventative mediation services, 11 sets of negotiations were completed using the technique, resulting in 11 collective bargaining agreements. The negotiations were continuing in the other 2 cases; therefore, the technique had a success rate of 100% again this year. Last year, 11 cases were completed, resulting in 11 ratified successor collective bargaining agreements. This non-confrontational bargaining initiative is discussed in greater detail in the Annual Report of the Panel of Mediators.

Fact finding is the second step in the three-step statutory dispute resolution process. In fiscal year 1998 there were 19 fact-finding requests filed. Those requests represent an increase from last year's level. Eight (8) petitions were withdrawn or otherwise settled, 9 requests went to hearing, and 6 petitions are pending hearing. Last year 16 fact-finding hearings were held. The following employee organizations filed requests for fact-finding services this year:

Maine Education Association/NEA	11 requests
AFSCME Council 93	3
Maine State Employees Association	1
Rumford Professional Fire Fighters	1
Saco Firefighters Association	1
Teamsters Union Local 340	1
Topsham Employee Association	1

Interest arbitration is the third and final step in the statutory dispute resolution process. Under the provisions of the various public employee statutes administered by the Board and unless agreed otherwise by the parties, an interest arbitration award is binding on the parties on non-monetary issues. Salaries, pensions and insurance are subject to interest arbitration; but, an award on these issues is only advisory. In recent years the Board has received few interest arbitration requests. None were received in FY 97, 4 in FY 96, only one each in FY 95 and FY 94, and none in the preceding three years. This year, one interest arbitration request was received covering three separate bargaining units in the Town of Houlton. The services of the State Board of Arbitration and Conciliation

and Conciliation were requested in this case and the matter is pending at this time.

Although the public statutes require that arbitration awards be filed with the Board, they usually are not. This year, no interest arbitration reports were received. While we assume that there were no arbitration cases in the public sector during the year, it may be that parties have simply failed to provide proper notification to the Board.

In the wake of the Law Court's decision in *Mountain Valley Education Association v. Maine School Administrative District No. 43*, 655 A.2d 348 (Me. 1995), discussed in the FY 95 report, there was growing concern among public sector employee organizations that employers might "go through the motions" of bargaining so that they could lawfully implement their "last, best offer" on the topics of wages, pensions and insurance, if the bargaining impasse continues for a reasonable time after the statutory dispute resolution procedures are exhausted. The Board is aware of only two instances where the employer has implemented its "last, best offer" -- situations involving M.S.A.D. No. 43 and the Minot School Committee. The employer's action in both instances was litigated before the Board, the *M.S.A.D. No. 43* case that subsequently went to the Law Court and *Minot Education Association v. Minot School Committee*, No. 96-27, decided by the Board early in the current reporting period. The Board's decision was affirmed by the Superior Court, *Minot School Committee v. MLRB, et al.*, No. AP-97-52 (Me. Super. Ct., Ken. Cty., Dec. 16, 1997) and the matter is presently pending in the Supreme Judicial Court. This year's significant decline in the number of fact-finding hearings and interest arbitration requests should allay the employee organizations' concerns; however, the Board will continue to monitor this area very closely.

Prohibited Practices

One of the Board's main responsibilities is to hear and rule on prohibited practice complaints. Formal hearings are conducted by the full, three-person Board. Twenty (20) complaints were filed in FY 98. This represents a moderate decrease from the FY 97 level. During the last 5 years, the number of complaints filed each year has fluctuated from a low of 17 to a high of 45, with the mean being 29.8. Many of the complaints received during the past year charge violations of the duty to negotiate in good faith.

In addition to the 20 complaints filed in FY 98, there were 22 carryovers from FY 97, compared with 22 complaints and 15 carryovers last year. Board panels conducted 4 evidentiary hearing days involving 4 cases during the year, compared with 8 in FY 97.

Board members sitting singularly as prehearing officers held conferences in 8 cases, compared with 10 in FY 97. The Board issued formal Decisions and Orders in 10 cases. Three (3) cases (1 being deferred to arbitration) have been continued indefinitely at the request of one or both parties. Such a continuance, or inactivity, usually indicates that the parties are attempting to resolve their differences, even though a complaint has been filed to preserve the complainants' rights, given the Board's six-month statute of limitations. Six (6) complaints await prehearing and hearing. The executive director has continued to be actively involved settling prohibited practice cases through telephone conferences with the parties' representatives. Continuing a development introduced in FY 96, the services of the executive director or a Board attorney are offered on the day of the hearing to attempt to settle cases. If the parties either decline the Board's offer or if the effort is unsuccessful, the Board members are present, ready to convene a formal evidentiary hearing. This was attempted on one occasion this year and, while apparently successful at the time, details of the settlement agreement precluded its being implemented. The matter has gone forward to hearing before the Board. Twenty (20) complaints were dismissed or withdrawn at the request of the parties. One (1) case was dismissed by the prehearing officer issuing a decision on motion to dismiss. Prohibited practice complaints were filed by the following this year:

Maine State Employees Association	5 complaints
Maine Education Association/NEA	3
Federation of Nurses & Health Professionals	2
Individuals (charging duty of fair representation violations & discrimination)	2
Maine Association of Police	2
United Paperworkers International Union	2
AFSCME Council 93	1
American Federation of Teachers	1
International Association of Fire Fighters	1
MSAD No. 11 Board of Directors	1

Appeals

No unit determination appeals were filed this year. One unit clarification appeal was received, but was dismissed as having been untimely filed. Two election appeals were filed, both of which were later withdrawn.

The Board was involved in two cases in the courts this year. In *Larry M. Casey v. Mountain Valley Education Association and School Administrative District No. 43*, Nos. 96-26 & 97-03, the Board held that the Complainant failed to meet his burden of proof in

establishing that his bargaining agent had violated its duty of fair representation by failing to represent him, since his return from layoff status in 1992, contributing to his eventual termination, and by refusing to take his termination grievance to arbitration. The Board further held that the Complainant failed to meet his burden of proof in establishing that his former employer terminated him at the end of the 1995-1996 school year in retaliation for his having won a grievance challenging his layoff in 1992 and that the employer prevented him from attending a union meeting concerning his termination by refusing him entry onto school grounds where the meeting was held. Since the Complainant failed to meet his burden of proof in either complaint, both were dismissed by the Board.

The appeal to the Superior Court was not taken within the time limit established by statute; therefore, it was dismissed by the Court. Rather than appeal the Superior Court action to the Law Court, the Appellant moved to consolidate the complaint for judicial review of the Board's action with a civil action against the bargaining agent, the employer, and others that was pending in the Superior Court. Since the complaint for review of Board action had already been dismissed without an appeal to the Law Court having been taken, prior to the filing of the motion to consolidate, the Superior Court denied the Appellant's motion. An appeal from this latter decision is currently pending in the Supreme Judicial Court.

The second Board case before the courts this year was *Minot Education Association v. Minot School Committee*, No. 96-27. In this case, the Board held that the public employer had violated the duty to negotiate in good faith, among other things, by engaging in surface bargaining. The underlying bargaining dispute had gone to interest arbitration and, after the arbitration panel had issued its award, the employer had implemented its last-best offer on wages and insurance. Since it concluded that the employer had violated the statute prior to the interest arbitration proceeding, the Board reinstated the *status quo ante* in effect prior to the arbitration. The Board's decision was affirmed by the Superior Court. An appeal to the Law Court has been argued and is pending decision by the Court.

Summary

The following chart summarizes the filings for this fiscal year, along with the previous five years:

	FY 1993	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998
Unit Determination/ Clarification Requests Number filed---	12	+33% 16	+6% 17	-47% 9	+111% 19	-10.5% 17
Agreements on Bargaining Unit (MLRB Form #1) Number filed---	23	-22% 18	+56% 28	-18% 23	-- 23	+69.6% 39
Voluntary Recognitions (MLRB Form #3) Number filed---	6	-- 6	-17% 5	-40% 3	+66.7% 5	+40% 7
Bargaining Agent Election Requests Number filed---	12	16.7% 14	7.1% 15	-- 15	+20% 18	-11.1% 16
Decertification Election Requests Number filed---	2	+250% 7	-85.7% 1	-- 1	+200% 3	+167% 8
Decert./Certification Election Requests Number filed---	2	+150% 5	-60% 2	+100% 4	-75% 1	+100% 2
Mediation Requests Number filed---	115	-9% 114	-32% 77	-10% 69	+7.25% 74	-8.1% 68
Fact-Finding Requests Number filed---	24	+8% 26	-23% 20	+20% 21	-33.33% 14	-7.1% 13
Prohibited Practice Complaints Number filed---	38	+18% 45	-62% 17	+59% 27	-18.5% 22	-9.1% 20

As the above table indicates, the demand for the Board's different services varied during the fiscal year. Despite a larger number of decertification petitions, overall continued organizational activity may indicate that demand for all of the Board's services will continue to increase in the future. In recent years we have predicted that, as the number of organized employees approaches the complete pool of those eligible, the number of new units created each year will decline. Although the Board has been in existence since 1969 and organizational activity should be nearing the point of saturation, such activity has continued to grow over the last 5 years. More units means more requests for changes in unit composition, more elections to change or oust bargaining agents, a greater potential for prohibited practice complaints, and increased demand for

dispute resolution services.

During FY 98, public sector labor-management relations in Maine continued to mature. Parties have increasingly relied on the statutory dispute processes to settle their differences, rather than resorting to self-help remedies. The development of more mature labor relations is evidenced by the strong demand for mediation services, particularly non-confrontational preventative mediation, and the willingness of parties to settle prohibited practice cases. In sum, the Board's dispute resolution services fostered public sector labor peace throughout the fiscal year.

Dated at Augusta, Maine, this 1st day of July, 1998.

Respectfully submitted,

A handwritten signature in cursive script, reading "Marc P. Ayotte", written over a horizontal line.

Marc P. Ayotte
Executive Director
Maine Labor Relations Board